

Exhibit “B”

Marvin Beshore

From: Dana Zakarian <dzakarian@nbparis.com>
Sent: Wednesday, August 5, 2020 12:56 PM
To: Marvin Beshore; al.pfeiffer@lw.com; jason.turner4@usdoj.gov; Joel Beckman; gfranklin@primmer.com; William Nystrom; Michael Paris; Elizabeth Reidy
Cc: TMiller@bakerandmiller.com; Shap Smith
Subject: RE: Request for non-objection to Motion for Leave to File Brief for Amici Curiae

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CONTENT IS SAFE

Marvin,

Plaintiffs do not consent to the filing of an “*amicus*” brief on behalf of National Council of Farmer Cooperatives, the National Cooperative Business Association and CoBank, ACB. Plaintiffs will oppose any motion for leave to file any so called *amicus* brief.

National Council of Farmer Cooperatives, National Cooperative Business Association and CoBank, ACB have no standing to file a brief in this matter. Indeed, there is no question that DFA is competently represented and capable of addressing issues relating to the meaning of “mutual benefit.”

Moreover, your clients do not constitute “friends of the Court.” See *United States v. Hunter*, 1998 WL 372552, at *1 (D. Vt. June 10, 1998) (“The term ‘amicus curiae’ means friend of the court, not friend of a party.”) (internal citations omitted). Indeed, DFA is a member of the National Council of Farmer Cooperatives, its biggest contributor from 2004 to the present, and both Rick Smith (CEO) and Greg Wickham (CFO) sit on the board of directors. Similarly, CoBank has provided funding to DFA - - Wickham has even recognized that “CoBank is a longtime financial partner for DFA.” CoBank, meanwhile, has praised DFA as one of “the premier milk marketing cooperatives in the nation.” At least one individual sits on the Board of Directors for both DFA and CoBank. Likewise, you have entered your appearance on behalf of DFA in countless matters throughout the country.

In short, given your clients’ relationship with DFA, you seem to be interested in filing a “friend of DFA” brief, not an *amicus* brief. See *United States v. Gotti*, 755 F.Supp. 1157 (E.D.N.Y. 1991) (“Rather than seeking to come as a ‘friend of the court’ and provide the court with an objective, dispassionate, neutral discussion of the issues, it is apparent that the NYCLU has come as an advocate for one side.”).

If you file a motion for leave, we expect that you will disclose yours and your clients’ relationship with DFA and attach this email to your motion, setting forth Plaintiffs’ position.

Dana



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From: Marvin Beshore <mbeshore@johnsonduffie.com>

Sent: Wednesday, August 5, 2020 8:33 AM

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Cc: TMiller@bakerandmiller.com; Shap Smith <:ssmith@DINSE.COM>

Subject: Request for non-objection to Motion for Leave to File Brief for Amici Curiae

Counsel:

I am requesting your concurrence, or non-objection, to our filing today a brief on behalf of the National Council of Farmer Cooperatives, the National Cooperative Business Association, and CoBank, ACB as *amici curiae*. The brief addresses the single issue of "mutual benefit" under the Capper-Volstead Act.

Thank you in advance for your anticipated cooperation.

Marvin



Marvin Beshore

Attorney

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